



Express Mail No. EV 913 329 130 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Srivastava	Confirmation No.:	7769
Serial No.:	09/750,972	Art Unit:	1643
Filed:	December 28, 2000	Examiner:	YAEN, Christopher H.
For:	ALPHA (2) MACROGLOBULIN RECEPTOR AS A HEAT SHOCK PROTEIN RECEPTOR AND USES THEREOF	Attorney Docket No:	8449-134-999 (708584-999133)

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

MAIL STOP ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant received a Notice of Allowance dated August 23, 2006 ("the Notice") in connection with the above-identified application. Accompanying the Notice was a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) which indicated that the patent term adjustment to date is 0 days for the above-identified application.

Applicant hereby respectfully requests reconsideration of the patent term adjustment indicated in the notice of allowance. Specifically, Applicant believes that the total patent term adjustment to date should be 640 days under 37 C.F.R. § 1.703(f).

In support of this request, Applicant submits the following statement of facts pursuant to § 1.705(b).

- (i) The correct patent term adjustment calculated under § 1.702(a) is 741 days, which is the sum of 27 days, which is the delay by the Office under § 1.702(a)(1), plus 714 days, which is the delay by the Office under § 1.702(a)(2). The bases for this adjustment are as follows.
 1. Delay by the Office under § 1.702(a)(1): Section 1.702(a)(1) provides that the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to mail at least one of (i) a notification under 35 U.S.C. § 132 or (ii) a notice of allowance under 35 U.S.C. § 151, not later than 14 months after the date on which the application was filed under 35

U.S.C. § 111(a) or fulfilled the requirements of 35 U.S.C. § 371 in an international application.

As acknowledged by the Office in its calculation of Patent Term Adjustment, the Office failed to mail a notification under 35 U.S.C. § 132 within 14 months of the filing date of this application. This application was filed on December 28, 2000. Accordingly, a Section 132 notification was due by February 28, 2002. However, the first Section 132 notification was mailed by the Office on March 27, 2002, which is a delay of 27 days.

2. Delay by the Office under §1.702(a)(2): Section 1.702(a)(2) provides that the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to respond to a reply under 35 U.S.C. §132 or to an appeal taken under 35 U.S.C. § 134 not later than 4 months after the date on which the reply was filed or the appeal was taken.

Applicant submits that the Office failed to respond to a reply under 35 U.S.C. §132 within 4 months after the date on which a reply was filed. Specifically, the Office failed to respond to Applicant's Amendment filed on November 28, 2003 within the 4 month time period required by Section 1.702(a)(2). This period expired on March 28, 2004 and the Office responded to Applicant's Amendment with a non-final Office Action mailed March 13, 2006, which is a delay of 714 days.

In support of these facts, Applicant submits (1) a copy of Applicant's amendment filed on November 28, 2003 (in response to a non-final Office Action dated August 28, 2003) bearing a stamp indicating receipt by the Office on November 28, 2003, enclosed as **EXHIBIT A**; and (2) a copy of the non-final Office Action dated March 13, 2006, indicating on its summary page that it is responsive to Applicant's communication filed on November 28, 2003, enclosed as **EXHIBIT B**.

- (ii) the relevant dates as specified as specified in §§ 1.703(a)-(e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) are as follows:

An adjustment is sought under Section 1.703(a)(2); Section 1.703(a) provides that the period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. § 111(a) or fulfilled the requirements of 35 U.S.C. § 371 and ending on the date of mailing of either an action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151, whichever occurs first; and

(2) The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. § 132, or a notice of allowance under 35 U.S.C. § 151, whichever occurs first.

While the patent term adjustment calculated by the Office included the time period under § 1.702(a)(1), the Office neglected to include the time period under § 1.702(a)(2). Thus, Applicant seeks adjustment under § 1.702(a)(2) for the period beginning March 29, 2004 and ending March 13, 2006. Applicant believes that this period consists of 714 days.

Applicant believes that the total period of adjustment due to examination delay under 37 C.F.R. § 1.703(f) is 640 days, which is sum of the delays by the Office under §§ 1.702(a)(1) and (a)(2) less the delays by Applicant under § 1.704. As discussed above, the delays by the Office amount to a total of 741 days, which is the sum of 27 days under § 1.702(a)(1) and 714 days under § 1.702(a)(2). As discussed in section (iv) below, Applicant believes that the total delays attributable to Applicant amount to 101 days;

- (iii) the above-identified application is not subject to a terminal disclaimer; and
- (iv) the circumstances during the prosecution of the application that constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in § 1.704 are believed to consist of the following:

1. 9 days due to Applicant's filing of an Information Disclosure Statement on May 8, 2002, which was considered supplemental to Applicant's response filed April 29, 2002; and
2. 92 days due to Applicant's filing of a response to a December 4, 2002 non-final Office Action on June 4, 2003.


Accordingly, Applicant believes that the delays attributable to Applicant under § 1.704 total 101 days.

In summary, the total adjustment under § 1.702(a) is 741 days, the total delays attributable to Applicant under § 1.704 is 101 days, and thus the total period of adjustment due under 37 C.F.R. § 1.703(f) is believed to be 640 days. Accordingly, Applicant respectfully requests an adjustment of patent term under § 1.703(f) totaling 640 days.

Pursuant to 37 C.F.R. § 1.705(a) and § 1.18(e), the fee required for filing this application is believed to be \$200.00. Please charge the required fee to Jones Day Deposit Account No. 50-3013.

Respectfully submitted,

Date: November 16, 2006


Adriane M. Antler 32,605
(Reg. No.)
JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939